

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 21 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

AYSEL CALIK, ZEYNEP CALIK, MEHMET )	2 CA-CV 2010-0088
CALIK and AYSE CALIK, individually and on )	DEPARTMENT A
behalf of statutory beneficiaries of KUDRET )	
CALIK, deceased; MEHMET KAYA, )	<u>MEMORANDUM DECISION</u>
individually and on behalf of statutory )	Not for Publication
beneficiaries of HAKAN KAYA, deceased; )	Rule 28, Rules of Civil
HAKAN CALIK, individually; DILAY )	Appellate Procedure
SIMSEK, individually; and NIHAL AYDIN, )	
individually, )	
)	
Plaintiffs/Appellants, )	
)	
v. )	
)	
MCDONNELL DOUGLAS CORPORATION; )	
MCDONNELL DOUGLAS HELICOPTER )	
COMPANY; MD HELICOPTERS, INC.; )	
GOODRICH PUMP & ENGINE CONTROL )	
SYSTEMS, INC.; BOEING AEROSPACE )	
MIDDLE EAST, LTD.; BOEING AEROSPACE )	
OPERATIONS, INC.; THE BOEING )	
COMPANY; and ROLLS-ROYCE )	
CORPORATION, all foreign corporations, )	
)	
Defendants/Appellees. )	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20084677

Honorable Ted B. Borek, Judge

APPEAL DISMISSED

---

Copple & Copple, P.C.  
By Steven D. Copple and S. Christopher Copple

Tucson  
Attorneys for Plaintiffs/Appellants

Perkins Coie LLP  
By Howard Ross Cabot and Jacob C. Robertson

Phoenix  
Attorneys for Defendants/Appellees  
McDonnell Douglas Corp.;  
McDonnell Douglas Helicopter Co.;  
Boeing Aerospace Middle East, Ltd.; and  
The Boeing Company

Gust Rosenfeld P.L.C.  
By James H. Marburger and Charles W. Wirken

Phoenix

and

Morrison & Foerster, L.L.P.  
By Don G. Rushing and William D. Janicki

San Diego, CA  
Attorneys for Defendant/Appellee  
MD Helicopters, Inc.

Polsinelli Shughart PC  
By Edward R. Glady, Jr. and Eric S. Rothblum

Phoenix  
Attorneys for Defendant/Appellee  
Goodrich Pump & Engine  
Control Systems, Inc.

Bowman and Brooke LLP  
By Thomas M. Klein and C. Megan Fischer

Phoenix  
Attorneys for Defendant/Appellee  
Rolls-Royce Corporation

---

H O W A R D, Chief Judge.

¶1 Appellants Aysel, Zeynep, Mehmet, and Ayse Calik, Mehmet Kaya, Hakan Calik, Dilay Simsek, and Nihal Aydin appeal from the dismissal of their claims against

appellees McDonnell Douglas Corporation, McDonnell Douglas Helicopter Company, MD Helicopters, Goodrich Pump and Engine Control Systems, Boeing Aerospace Middle East, Boeing Aerospace Operations, The Boeing Company, and Rolls-Royce Corporation. After reviewing the parties' supplemental briefing on the issue of jurisdiction, we conclude we lack jurisdiction of the appeal and dismiss it.

¶2 We have an independent duty to determine whether we have jurisdiction over an appeal. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997). Our jurisdiction is prescribed by statute, and we have no authority to entertain an appeal over which we do not have jurisdiction. *See Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995).

¶3 Section 12-2101(B), A.R.S., vests jurisdiction in this court for an appeal “[f]rom a final judgment.” When a substantive matter is pending in the trial court, “appellate courts should dismiss a case for lack of jurisdiction.” *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶ 38, 132 P.3d 1187, 1195 (2006); *see also Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981). There exists

only a limited exception to the final judgment rule that allows a notice of appeal to be filed after the trial court has made its final decision, but before it has entered a formal judgment, if no decision of the court could change and the only remaining task is merely ministerial.

*Smith*, 212 Ariz. 407, ¶ 37, 132 P.3d at 1195.

¶4 The trial court granted MD Helicopter's motion to dismiss on the ground of forum non conveniens, in which two other defendants had joined, on February 17, 2010. The ruling only dismissed the claims against three of the eight defendants and did not

include the required finality language from Rule 54(b), Ariz. R. Civ. P. Therefore, it was not a final, appealable judgment. *See* Ariz. R. Civ. P. 54(b).

¶5 After the trial court ruled on the motion to dismiss, appellants filed a motion for modification or reconsideration, requesting the court: 1) impose conditions to ensure Turkey was an adequate, alternative forum; 2) include a “return jurisdiction” clause in the event Turkey did not provide an adequate, alternative forum; 3) resolve the issue of export-controlled documents; 4) determine the situation of the other five defendants; and 5) address its consideration of an international treaty in making the ruling. This motion, in addition to a proposed form of judgment and objections to the proposed form of judgment, was pending at the time appellants filed their notice of appeal. This notice only attempted to appeal from the trial court’s February 17 order dismissing the claims against three defendants based on forum non conveniens. Between its initial ruling and final ruling nearly eight months later, the court appears to have considered the motion for reconsideration, allowed time for an affidavit on Turkish law to be taken and held a hearing on the forms of proposed judgment. And, the final judgment differs substantially from the February 17 ruling. The final judgment applies to all eight defendants, rather than three. The final judgment also sets forth requirements and conditions, including that: 1) any action must be filed in Turkey within ninety days of the judgment; 2) the defendants shall consent to Turkish jurisdiction and venue; 3) the defendants shall waive statutes of limitation in Turkey; 4) the defendants shall make any witnesses, documents and evidence available in Turkey; 5) the defendants shall satisfy any judgment ordered against it in Turkey; and 6) if the Turkish lawsuit cannot be

brought or a defendant fails to comply with the conditions, the plaintiffs can re-file the action in Pima County. The February ruling does not contain any of these conditions or requirements.

¶6 Both the motions on the proposed form of judgment and appellants' motion for modification or reconsideration of the trial court's ruling required the court to weigh and consider arguments. We cannot find that a court's determination of conditions to impose on a party, evaluation of the merits of proposed forms of judgment, and ruling on the inclusion of additional defendants are merely ministerial. *See Smith*, 212 Ariz. 407, ¶ 37, 132 P.3d at 1195. Because substantive matters were pending before the trial court when appellants first filed their notice of appeal, this court did not have jurisdiction over the appeal. *See id.* ¶ 38. Furthermore, even though appellants' status report to this court noted "the Trial Court entered final Orders on all pending matters on October 21, 2010" and "Appellants will Supplement the Notice of Appeal," no notice of appeal was filed after the final judgment in October. Thus, this court does not have jurisdiction to consider an appeal from either the February or October rulings. *See id.* ¶ 40.

¶7 Appellants argue their notice of appeal was timely because their motion for modification or reconsideration was not a "time-extending motion" under Rule 9(b), Ariz. R. Civ. App. P. However, Rule 9(b) provides for an extension of time for appeal when certain motions are filed after an entry of judgment. Because the trial court still was considering substantive matters, its February ruling was not a final entry of judgment, *see Smith*, 212 Ariz. 407, ¶¶ 37-40, 132 P.3d at 1195, and Rule 9(b) is inapposite.

¶8

For the foregoing reasons, we dismiss this appeal.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge